IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case
Date of decision: 2nd March, 2006

S.T. R. No. 52 of 2003

Commissioner of Sales Tax
U.P. Lucknow. .....Applicant/Revisionist

Vs.

S/S Gauraya Straw & Board Mill
Kashipur. .....Opposite Party

Learned Standing Counsel for the Revisionist.
Shri S.K. Posti, Learned Counsel for the respondent.

A.F.R. (Approved for Reporting)
Not Approved for Reporting

(Hon. Mr. Justice Prafulla C. Pant)

Date: 02.03.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

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(Old No. 895/91)

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Hon'ble Prafulla C. Pant, J.

This Sales Tax Revision was filed before the Allahabad High Court in the year 1991, from where it has been received by transfer by this Court, under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

2. The revision, preferred under Section 11(1) of U.P. Sales Tax Act, 1948, is directed against order/ award dated 01.04.1991, passed by Sales Tax Tribunal, Haldwani, in Second Appeal No. 45 of 1989.

3. The following question of law is involved in this revision:-

Whether the Sales Tax Tribunal has erred in law in treating the 'rice husk' and 'paddy husk' as two different items ?

4. Heard learned counsel for the parties and perused the record.

5. The assessee is manufacturing unit of the Card Board. The matter relates to the assessment year 1982-83.

6. The dispute in the present case has arisen due to the fact that the assessing officer has imposed the tax at the rate of 4.4%, treating the purchase of paddy husk as rice husk. Learned tribunal has taken the view that the husk purchased by the dealer is a paddy husk, which was an unclassified item. As such, the dealer was not liable to pay any tax on first purchase of said commodity. It has further been held that the Assessing Officer has wrongly treated purchase of paddy husk as that of rice husk. Learned counsel for the revenue referred to the principle of law laid down in Commissioner Sales Tax Vs. Navin Traders 1973 UPTC Pg 215 and argued that paddy husk and rice husk are the same item and as such the learned tribunal has erred in law in holding that the two are different. I have gone through the principle of law contained in aforementioned case law. No where in said case law it has been held that paddy husk and rice husk are one and the same thing. What has been held in said case is that 'rice bran' is a different commodity as compared to 'rice husk'. In Commissioner Sales Tax Vs. Navin Traders (Supra), it has been held that rice with its outer husk is known as paddy. After the husk is removed, the product is known as rice. It is further held that the 'rice bran' infact is powdered rice, which is obtained in the polishing process. Therefore, in the opinion of this Court, the case law does not help the revisionist.

7. Admittedly, the dealer had purchased paddy husk for using it as fuel in their boiler. Under notification No. 3712 dated 05.06.1985, the tax has been levied on the purchase of

'rice husk'. In Commissioner of Trade Tax Vs. U.P. Straw and Agro Product Ltd. 2004 UPTC Pg. 1125, it has been held that rice husk and paddy husk are two different commodities. Under the aforesaid notifications, what is taxable is purchase of rice husk and not the paddy husk. Explaining the above expression, Allahabad High Court in said case has held that when the outer covering of rice is removed, the brownish rice is produced. The rice with its outer husk is known as paddy. The outer dry covering which is obtained while paddy is de hulled, is known as paddy husk. The paddy husk is dry and does not have the contents of oil. On the other hand, rice husk having contents of the oil element is infact included under aforesaid notification on the first purchase of which the tax could have been imposed. It is only after the paddy husk is removed from the rice, the rice husk can be obtained in the process of polishing of rice, which contains oil element.

8 Therefore, in view of the aforesaid discussion, I do not see any error of law committed by the learned tribunal in holding that paddy husk and rice husk are two different items. Accordingly, the question of law is answered in favour of the assessee. The revision is dismissed at the admission stage.

(Prafulla C. Pant, J.)

Dt: 2nd March, 2006
Sweta